

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 March 2007

CASE NO.: 2006-STA-45

In the Matter of

WARREN ANDREWS,
Complainant

v.

MAX TRANS, LLC,
Respondent

**RECOMMENDED ORDER APPROVING SETTLEMENT AND DISMISSING
COMPLAINT**

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act ("STAA") of 1982 (49 U.S.C. § 31105), the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2622, the Water Pollution Control Act ("WPC"), 33 U.S.C. § 1367, the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300j-9i, the Solid Waste Disposal Act ("SWDA"), and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9610.

The regulations implementing the STAA are found at 29 C.F.R. § 1978. The regulations implementing the TSCA, WPC, SDWA, SWDA, and CERCLA are found at 29 C.F.R. § 24. All of the acts also apply the Rules of Practice and Procedure found at 29 C.F.R. § 18.

On March 13, 2007, the parties filed a Settlement Agreement ("Settlement Agreement"), which resolves the controversy arising from the complaint of Warren Andrews against Max Trans, LLC.

The Settlement Agreement provides that the Complainant releases the Respondent from all costs, expenses, rights, damages, or fees arising from or related to any act, omission, transaction, or occurrence caused by or arising out of any matter connected with the employment, or cessation thereof of the Complainant with the Respondent or any matters set forth, or that could have been set forth, in this proceeding. In consideration for this release, the Respondent has agreed to the payment of a specified sum of money and a similar release toward the Complainant.

The regulations implementing the STAA require that any settlement resolving a case under that act must be approved by the Administrative Law Judge. 29 C.F.R. § 1978.11(d)(2).

Additionally, the Department of Labor must approve settlements under the TSCA and SDWA but not under the WPC, SWDA and CERCLA. *See* 15 U.S.C. § 2622(b)(2)(A) (TSCA); 42 U.S.C. § 300j-9i(2)(B)(i) (SDWA); *see also* *Beliveau v. Naval Undersea Warfare Ctr.*, ARB Nos. 00-073, 01-017, 01-019, ALJ Nos. 1997-SDW-1, 4 & 6 (ARB Nov. 30, 2000).

Given the regulatory and statutory distinctions concerning settlement approval, and the Settlement Agreement's broad language concerning the scope of the parties' mutual release, I note at the outset that this review is limited to whether the terms of the settlement are a fair, adequate, and reasonable settlement of the Complainant's allegations that the Respondent violated the STAA, TSCA, and SDWA. *Kidd v. Sharron Motor Lines, Inc.*, 87-STA-2 (Sec'y July 30, 1987); *Poulos v. Ambassador Fuel Oil Co.*, 86-CAA-1, (Sec'y Order Nov. 2, 1987). As was stated in *Poulos*:

The Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consol. Edison Co. of N.Y., Inc.*, 86-CAA-2, (Sec'y Order Approving Settlement July 29, 1987); *Chase v. Buncombe County, N.C.*, 85-SWD-4, (Sec'y Order on Remand November 3, 1986).

The Settlement Agreement must be reviewed to determine whether the terms are a fair, adequate, and reasonable settlement of the complaint. *Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1 (Sec'y Order, Nov. 2, 1987). This Order approving the settlement is final since all parties have joined in the Agreement. *See Swischer v. Gerber Childrenswear, Inc.*, 93-STA-1 (Sec'y Jan. 4, 1993).

The Settlement Agreement provides that within ten days following the entry of an order of approval, the Respondent will pay the Complainant a specified sum of money, a portion of which is designated "back pay" and a portion of which is designated an "additional payment...for his claims of emotional distress and other tort like damages." At this time, the Respondent also agrees to pay a specified sum of money to the Complainant's attorneys for attorney's fees.

The Settlement Agreement provides general mutual releases in paragraphs 1 and 2. These paragraphs could possibly be construed as a waiver by either party of a cause of action potentially arising in the future. These provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *Bittner v. Fuel Economy Contracting Co.*, 88-ERA-22, (Sec'y Order June 28, 1990).

I find the overall settlement terms to be reasonable but some clarification is necessary. Paragraph 3 contains a confidentiality provision limiting all disclosures except under certain stated circumstances. It has been held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (1988) ("FOIA"), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15 (ARB 1998). The records in this case are agency records which must be made available for

public inspection and copying under the FOIA. However, the Respondent will be provided a pre-disclosure notification giving it the opportunity to challenge any such potential disclosure. The Agreement itself is not appended and will be separately maintained and marked "PREDISCLOSURE NOTIFICATION MATERIALS."

I find the terms of the confidentiality provision do not violate public policy in that they do not prohibit the Complainant from communicating with appropriate government agencies. *See Bragg v. Houston Lighting & Power Co.*, 94-ERA-38 (Sec'y June 19, 1995); *Brown v. Holmes & Narver*, 90-ERA-26 (Sec'y May 11, 1994); *CT Light & Power Corp. v. Sec'y, U.S. Dep't of Labor*, No. 95-4094, 1996 U.S. App. LEXIS 12583 (2d Cir. May 31, 1996); *Anderson v. Waste Mgmt. of NM*, 88-TSC-2, (Sec'y Final Order Approving Settlement December 18, 1990)(holding that where the Secretary honored the parties' confidentiality agreement except where disclosure may be required by law).

As so construed, noting that the parties are represented by counsel, I find the terms of the Settlement Agreement to be fair, adequate and reasonable. Accordingly, I recommend the Settlement Agreement be approved and the complaint filed by Warren Andrews be dismissed with prejudice.

A

RICHARD A. MORGAN
Administrative Law Judge

NOTICE OF REVIEW: The Administrative Law Judge's Recommended Order Approving Settlement, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the Administrative Law Judge's Recommended Order Approving Settlement, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the Administrative Law Judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.